

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

GENE ROUSE and DOYLE WILSON, Plaintiffs, v. WALTER & ASSOCIATES, L.L.C. and MARVIN J. WALTER, Defendants/Counterclaim Plaintiffs, v. GENE ROUSE, DOYLE WILSON, and BIOTRONICS, INC., Counterclaim Defendants.	Civil No. 4:05-cv-00440 DEFENDANT WALTER & ASSOCIATES, L.L.C. MOTION FOR LEAVE TO AMEND ANSWER AND FILE THIRD PARTY COMPLAINT EXPEDITED HEARING REQUESTED
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Defendant Walter & Associates, L.L.C. (“W&A”) requests leave of Court to file the attached First Amended Answer to Plaintiffs’ First Amended Complaint and Counterclaim and Third Party Complaint, and in support thereof states as follows:

1. In January 2001, Iowa State University Research Foundation, Inc. (“ISURF”) licensed a software package to Walter & Associates, L.L.C. (“W&A”) and represented to W&A that the software package contained everything needed to conduct beef ultrasound image analysis. The software package delivered to W&A contained a program entitled “USOFT.” W&A operated its business using the software.

2. On August 21, 2005, Plaintiffs Gene Rouse (“Rouse”) and Doyle Wilson (“Wilson”) filed this copyright infringement action against W&A. Rouse and Wilson claim ownership to USOFT.

3. On August 31, 2005, W&A filed its Answer and Counterclaims against Rouse and Wilson, as well as their company, Biotronics, Inc. W&A alleged that USOFT was developed by Rouse and Wilson while they were employed by Iowa State University. W&A further alleged that ISURF owned USOFT as a work made for hire.

4. On January 30, 2006, Rouse and Wilson filed a First Amended Complaint, adding Marvin Walter as a party.

5. On February 20, 2006, W&A and Walter filed an Answer to First Amended Complaint and Counterclaim.

6. Previous to the present motion, W&A has not sought to amend its Answer to First Amended Complaint and Counterclaim.

7. Under the Scheduling Order initially entered in this case, pleadings closed on February 17, 2006.

8. The parties have conducted extensive written discovery.

9. On or about April 19, 2006, ISURF produced over 3,000 documents in response to a subpoena served by Plaintiffs in this action.

10. On July 20, 2006, Plaintiffs' counsel took depositions of Marvin Walter and Mark Henry, Operations Manager for W&A.

11. On July 21, 2006, W&A's counsel took the deposition of Viren Amin. W&A discovered that Amin helped develop USOFT and he also asserts an ownership interest in the software. Amin further testified that ISURF "knew" that it did not own USOFT before it licensed the software package to W&A.

12. The parties are currently scheduling the depositions of Plaintiffs Rouse and Wilson.

13. W&A requests permission to amend its Answer in the following respects: (a) add Viren Amin as a necessary party to the Declaratory Judgment claim, see First Amended Answer, Amended Counterclaims, ¶¶ 5, 14-19, Third Party Complaint ¶¶ 3-6; (b) add a claim of negligent misrepresentation against Rouse and Wilson, see First Amended Answer, Amended Counterclaims, ¶¶ 42-47; (c) add ISURF as a third party defendant based on claims of fraud, negligent misrepresentation, breach of contract, and indemnity, see First Amended Answer, Third Party Complaint, ¶¶ 1-2, 7-29; and (d) to conform its counterclaim to the information it has subsequently learned in the course of discovery, see First Amended Answer, Amended Counterclaims, ¶¶ 10, 11, 16-19, 21, 23, 27, 29.

14. Federal Rule of Civil Procedure 14(a) provides: “At any time after commencement of the action a defending party, as a third party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the third party plaintiff for all or part of the plaintiff’s claim against the third party plaintiff.”

15. Good cause exists to reopen pleadings and amend W&A’s Answer and Counterclaims to reflect what has been covered in discovery.

16. Reopening pleadings and allowing the Amended Answer is in the interest of justice and without prejudice to any party. Fed. R. Civ. P. 15(a).

17. The proposed amendments will not impact the trial date.

18. Discovery in this matter is open until December 1, 2006. Little discovery should be necessary concerning the additional legal claims and the parties will have adequate time to conduct remaining discovery.

19. The undersigned has conferred with opposing counsel regarding the proposed Amended Answer and Third Party Complaint. Opposing counsel intends to resist the motion.

WHEREFORE, Walter & Associates L.L.C. respectfully requests that the Court grant leave to file the Answer and Amended Answer and Third Party Complaint attached hereto, and direct the Clerk of Court to detach and file the Answer and Amended Answer.

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CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2006, I presented the foregoing to the Clerk of the Court for filing and uploading into the ECF system which will send notification of such filing to the following:

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